

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

QUINCY D. SCOTT, SR.,	)	
	)	Case No. 1:22-cv-316
<i>Petitioner,</i>	)	
	)	Judge Travis R. McDonough
v.	)	
	)	Magistrate Judge Susan K. Lee
WARDEN JOHNNY FITZ,	)	
	)	
<i>Respondent.</i>	)	
	)	

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**MEMORANDUM OPINION**

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This is a prisoner’s pro se petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1). Now before the Court is Respondent’s motion to dismiss the petition without prejudice due to Petitioner’s failure to exhaust his available state court remedies prior to filing this action (Doc. 11), in support of which he filed a memorandum (Doc. 12), and the state court record (Doc. 10). Petitioner has filed a response in which he states only that “[he] agrees with Respondent’s motion to dismiss [the] petition for writ of Habeas Corpus Relief without prejudice.” (Doc. 13, at 1.) Accordingly, in light of Petitioner’s lack of opposition thereto, Respondent’s motion to dismiss this action (Doc. 11) will be **GRANTED**, and this action will be **DISMISSED WITHOUT PREJUDICE**.

The Court must now consider whether to issue a certificate of appealability (“COA”) should Petitioner file a notice of appeal. Under 28 U.S.C. § 2253(a) and (c), a petitioner may appeal a final order in a habeas corpus proceeding only if he is issued a COA, and a COA may issue only where a Petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). When a district court denies a habeas petition on a procedural

basis without reaching the underlying claim, a COA should only issue if “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). As jurists of reason would not find the Court’s procedural ruling that the parties have agreed that the Court should dismiss this action debatable, a COA will not issue.

Also, the Court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Fed. R. App. P. 24.

**AN APPROPRIATE JUDGMENT WILL ENTER.**

**/s/ Travis R. McDonough**

**TRAVIS R. MCDONOUGH  
UNITED STATES DISTRICT JUDGE**